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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/047,523	10/25/2001	Alan R. Cohn	LIUI117961	3906

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EXAMINER

BRATLIE, STEVEN A

ART UNIT PAPER NUMBER

3652

DATE MAILED: 05/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

047523

Applicant(s)

COHN, et al

Examiner

BRATLIE

Group Art Unit

3652

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5/2/03
- ☒ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-23 is/are pending in the application.
- ☐ Of the above claim(s) is/are withdrawn from consideration.
- ☐ Claim(s) is/are allowed.
- ☒ Claim(s) 1-23 is/are rejected.
- ☐ Claim(s) is/are objected to.
- ☐ Claim(s) are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Application/Control Number: 10/047,523

Art Unit: 3652

1. Applicants argue that none of the references cited in the final Office Action teach or suggest a support device "supporting one of the first and second attachment arm assemblies and *maintaining the lift platform in a second plane substantially parallel to the first plane if at least a portion of the other of the first and second attachment arm assemblies fails.*"

Applicants should note that this terminology is functional and does not structurally define over Nilson (MPEP 2114).

Applicants argue that Nilson would pivot around either #25 or #30. Applicant should note that their device would pivot around either #42 or #44. Nilson inherently functions as applicants' device (MPEP 2112 and 2112.01). Applicants must provide appropriate evidence that there is ^a functional difference.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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4. Claims 1-23 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Nilson in view of Fretwell et al. Corley, Jr. and Japanese Patent #457685. Nilson discloses a substantially similar lift system including parallel arms #24, #29 and support member #32. It is noted that using the lift for a wheelchair is merely intended use and does not structural define over the art (In re Sinex 135 USPQ 302; In re Pearson 181 USPQ 641). Fretwell et al discloses the use of a similar lift for a wheelchair. Nilson lacks an u-shaped bracket support. Corley, Jr. discloses an u-shaped bracket #35, #36 at the end of the parallel arms. It would have been obvious to a mechanic with ordinary skill in the art at the time the invention was made to substitute such a bracket if so desired. The motivation is the know use of equivalents. Japanese Patent #457685 discloses the use of an u-shaped bracket 43a, 43b between the ends of the parallel link (claim 10).

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Brattie whose telephone number is (703) 308-2669. The examiner can normally be reached on Monday through Thursday from 6:30 to 5:00. Friday is the examiner's day off.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 306-4177.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Bratlie/kn
May 22, 2003



**STEVEN A. BRATLIE
PRIMARY EXAMINER**